

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

CLIVE N. MELHADO

Petitioner,

vs.

Civil Action 2:14-cv-402
Judge Economus
Magistrate Judge King

WARDEN, MARION CORRECTIONAL
INSTITUTION,

Respondent.

ORDER

This is an action for a writ of habeas corpus under 28 U.S.C. § 2254. On April 30, 2014, the United States Magistrate Judge recommended that the action be transferred to the United States Court of Appeals for the Sixth Circuit as a successive petition. *Report and Recommendation*, ECF 2. This matter is now before the Court on petitioner's objection to that recommendation. *Objection*, ECF 4. The court will consider the matter *de novo*. See 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b).

This action challenges petitioner's 2002 conviction in the Franklin County Court of Common Pleas for aggravated murder and aggravated robbery. Petitioner does not dispute the Magistrate Judge's finding that petitioner has previously presented challenges to this conviction in this Court. *Objection*, PAGEID 38. See *Melhado v. Warden, Warren Correctional Institution*, 2:04-cv-1146, *Petition*, ECF 1; *Motion to File Second or Successive Habeas Petition*, ECF 22.

However, petitioner disagrees with the Magistrate Judge's characterization of the action as a successive petition. Petitioner specifically argues that, because of errors allegedly committed by the state trial court,¹ "the Petitioner is yet to be properly sentenced and given a final Appealable Order. Until then, the Petitioner is yet to be sentenced and this petition at bar should be treated as Petitioner's First Petition." *Objection*, PAGEID 39.

This Court agrees with the Magistrate Judge that the *Petition* is properly characterized as a successive petition within the meaning of 28 U.S.C. § 2244(b)(3)(A). This Court therefore lacks authority to consider the claims raised in the present *Petition* unless and until the United States Court of Appeals for the Sixth Circuit authorizes that consideration. *Id.*

Accordingly, petitioner's *Objection*, ECF 4, is **DENIED**. The *Report and Recommendation*, ECF 2, is **ADOPTED AND AFFIRMED**.

The *Petition*, ECF 1, **IS ORDERED TRANSFERRED** to the United States Court of Appeals for the Sixth Circuit as a successive petition.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE

¹These alleged errors form the basis of some of the claims presented in the *Petition*, ECF 1.